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8 IN THE UNITED STATES DISTRICT COURT  
9 FOR THE NORTHERN DISTRICT OF CALIFORNIA

10 WILLIAM JAMES, )  
11 )  
12 Petitioner, ) No. C 06-3131 CRB (PR)  
13 vs. ) ORDER TO SHOW CAUSE  
14 MARK SHEPPARD, Warden, )  
15 Respondent. )  
\_\_\_\_\_ )

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17 Petitioner, a state prisoner incarcerated at Folsom State Prison, has filed a  
18 pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254.

19 **BACKGROUND**

20 Petitioner pleaded no contest to inflicting corporal injury on a cohabitant  
21 and admitted a firearm use enhancement in the Superior Court of the State of  
22 California in and for the County of Alameda. On or about June 28, 2004, the trial  
23 court sentenced him to the lower term of two years for the corporal injury charge  
24 and the upper term of 10 years for the enhancement, for a total of 12 years in  
25 state prison.

26 Petitioner unsuccessfully appealed his sentence to the California Court of  
27 Appeal and the Supreme Court of California, which on October 26, 2005 denied  
28 review of a petition allegedly raising the same claims raised here.

## DISCUSSION

### A. Standard of Review

This court may entertain a petition for a writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2254(a).

It shall "award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears from the application that the applicant or person detained is not entitled thereto." Id. § 2243.

### B. Claims

Petitioner seeks federal habeas corpus relief on the ground that he was denied his right to proof before a jury beyond a reasonable doubt of the circumstances in aggravation used to increase his punishment beyond the middle term. He also claims that the trial court failed to state an adequate reason for imposing the upper term because an arrest alone cannot be used to aggravate a sentence. Liberally construed, the claims appear cognizable under § 2254 and merit an answer from respondent. See Zichko v. Idaho, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for writs of habeas corpus liberally).

## CONCLUSION

For the foregoing reasons and for good cause shown,

1. The clerk shall serve by certified mail a copy of this order and the petition and all attachments thereto on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.

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